

DEPARTMENT OF INDUSTRIAL RELATIONS  
OFFICE OF THE DIRECTOR  
455 Golden Gate Avenue, Room 4181  
San Francisco, CA 94102

ADDRESS REPLY TO:  
P.O. Box 420603  
San Francisco, CA 94142



November 3, 1993

Mr. Daril Wiley  
Administrator  
Foundation for Fair Contracting  
3807 Pasadena Avenue, Suite. 150  
Sacramento, CA 95821

Re: SAMTRANS/BART (Colma BART station)  
PW Case No.: 93-034

Dear Mr. Wiley:

This letter constitutes the determination of the Director of the Department of Industrial Relations regarding public works coverage of the above named project. Based upon my review of the factual materials and the applicable law and prior determinations, it is my determination that the above named project is a public works.

The work at issue in this case was performed on property owned by Leroy and Elna Greenwood and Beverly Ann Dikas (hereafter collectively referred to as the Greenwoods), and included demolition and removal of a building on property, excavation and removal of underground storage tanks (UST's), excavation and removal of a concrete slab and footings, and soil remediation of all contaminated soil on site. Greenwoods first granted SAMTRANS a license to enter the property in order to commence work, including the work at issue here, as part of an extension of the BART system. Greenwoods subsequently entered into a real property purchase agreement with SAMTRANS, acting on its own behalf and on behalf of BART, which provided among other things that the Greenwoods were responsible for contracting with Certified Environmental Consulting, Inc., and its subcontractor, SEMCO, Inc., to do the building demolition, UST excavation and removal, and concrete slab excavation and removal and to backfill the excavation. In turn, the public entities agreed, among other things, to pay for the costs of all such work and subsequently deposited public funds into an escrow account to be used to pay for the work once completed and accepted. The Greenwoods paid for this work with the funds deposited into the escrow account. By agreement between

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BART and SAMTRANS, BART contributed 75% of the funds and SAMTRANS contributed 25% of the funds.<sup>1</sup>

The Greenwoods also contracted for soil remediation and contaminated soil off hauling, but the agreement between the Greenwoods and SAMTRANS was clear that the cost of the soil remediation work was to be paid only by the Greenwoods.

Under these facts, the building demolition and debris removal, the excavation and UST and concrete slab and footings removal work, the backfill and the resurface work would be public works within the meaning of Labor Code section 1720(a), as demolition or alteration work. (Priest v. Housing Authority of City of Oxnard (1969) 275 Cal. App. 2d 756, 80 Cal. Rptr. 145, 149.) Consistent with prior determinations<sup>2</sup>, the Greenwoods acted in the manner of an agent of the two public entities when contracting with CEC, Inc. and SEMCO, Inc., for this work, which the parties knew would be paid for by the public entities by deposit of sufficient funds into an escrow account to cover the costs of the work.

In contrast, the soil remediation work was to be contracted for and paid for by the Greenwoods alone, as a condition of subsequent sale of the property, free of environmental contamination, to the public entities. Since no public funds were used to pay for soil remediation work, it would not be considered public works.

Although you have asserted that SAMTRANS is currently leasing the property, our investigation found only that the Greenwoods had made an agreement to hold vacant and later granted a license to SAMTRANS, for which Greenwoods receive \$ 4,560.00 per month. The agreement to hold vacant is more in the nature of a contractual agreement to forbear transferring or leasing the property to another party. In view of finding this work to be a public works under Labor Code section 1720(a), it is unnecessary to determine whether the license agreement between the Greenwoods and SAMTRANS created a leasehold interest so as also to qualify as a public works within the meaning of Labor Code section 1720.2.

Pursuant to Title 8 of the California Code of Regulations, section 16002.5, any interested party may appeal this determination. The appeal must be filed within 30 days of the issuance of this determination. Any appeal shall set forth the factual

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<sup>1</sup> SAMTRANS indicates it may have advanced all the funds deposited into the escrow for payment of the work at issue, with the understanding that BART would reimburse SAMTRANS according to the 75% contribution agreement.

<sup>2</sup> PWCD # 91-031, Whittier Quad Public Improvement by Ahmanson Commercial Development, dated November 4, 1991.

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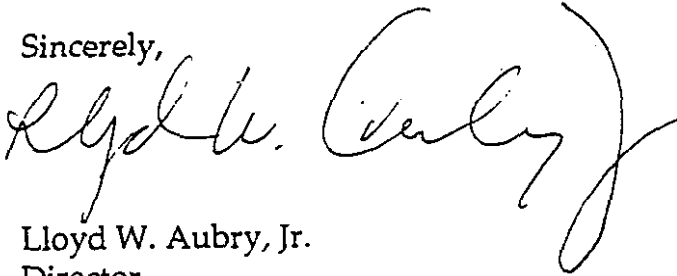
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and/or legal grounds upon which the decision is being appealed including all supporting documents.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lloyd W. Aubry, Jr.", written in dark ink.

Lloyd W. Aubry, Jr.  
Director

cc: R.W. Stranberg, Chief Deputy Director  
Victoria Bradshaw, Labor Commissioner  
Gail Jesswein, Chief, DAS  
Maria Y. Robbins, Deputy Chief, DLSR  
Vanessa L. Holton, Senior Counsel